

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 00632 (VEC)

5 TODD HOWE,

6 Defendant.

Sentence

7 -----x
8 New York, N.Y.
9 April 5, 2019
2:00 p.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: JANIS M. ECHENBERG

MATTHEW D. PODOLSKY

17 DAVID ZHOU

ROBERT BOONE

18 Assistant United States Attorneys

19 ORRICK, HERRINGTON & SUTCLIFFE, LLP

Attorney for Defendant

20 BY: SAVANNAH STEVENSON

21 Also Present:

Special Agent Delissa Pendland

22 Gary Jackson

1 (Case called)

2 MS. ECHENBERG: Good afternoon, your Honor. Janis
3 Echenberg, for the government. With me at counsel table are my
4 colleagues, Matthew Podolsky, Robert Boone, and David Zhou,
5 Special Agent Delissa Pendland and Gary Jackson.

6 THE COURT: Good afternoon.

7 MS. STEVENSON: Good afternoon, your Honor. Savannah
8 Stevenson, for Mr. Howe. And, of course, Mr. Howe is here
9 today.

10 THE COURT: Good afternoon.

11 Good afternoon, Mr. Howe.

12 Please be seated.

13 Okay, Ms. Stevenson, have you and your client read the
14 presentence report dated, December 3rd, 2018?

15 MS. STEVENSON: We have.

16 THE COURT: Have you discussed it with each other?

17 MS. STEVENSON: Yes, we have.

18 THE COURT: Mr. Howe, did you read the presentence
19 report?

20 THE DEFENDANT: Yes, I did, your Honor.

21 THE COURT: Did you discuss it with your lawyer?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: Ms. Stevenson, do you have any objections
24 to the report?

25 MS. STEVENSON: We do have several changes,

1 your Honor.

2 THE COURT: All right. Hang on a second.

3 Okay.

4 MS. STEVENSON: Okay. First, your Honor, looking at
5 paragraph 11 on page five.

6 THE COURT: Yes.

7 MS. STEVENSON: We note that in the -- the second line
8 notes that Mr. Howe pled guilty without the benefit of a plea
9 agreement.

10 THE COURT: Okay.

11 MS. STEVENSON: And, of course, he pled pursuant to a
12 cooperation agreement. So we request that change.

13 THE COURT: Okay.

14 MS. STEVENSON: In the same paragraph, your Honor, at
15 the end, I believe that it misstates the date that this case
16 was reassigned to you. It states March 20, 2018. I believe it
17 was 2017.

18 THE COURT: Is that right? It was during the trial or
19 right after -- shortly after the first trial.

20 MS. STEVENSON: Well, it was 2018.

21 THE COURT: I think that's right.

22 MS. ECHENBERG: Yeah. My recollection was after
23 trial.

24 THE COURT: It was definitely after Mr. Howe was
25 remanded.

1 MS. ECHENBERG: Correct.

2 MS. STEVENSON: Yes.

3 We're looking at paragraph 24 on page seven.

4 THE COURT: Yes.

5 MS. STEVENSON: There is an extra digit in the number
6 towards the bottom of that paragraph. It states \$351,000. It
7 should be \$35,000.

8 THE COURT: Yes, it should.

9 MS. STEVENSON: And then looking forward to paragraph
10 37 on page 12.

11 THE COURT: 37 on page 12. Okay.

12 MS. STEVENSON: The language in this paragraph is
13 somewhat misleading, your Honor, in that it states that this
14 amount is a reasonable estimate of the benefit received by Howe
15 from CPV. And that 1.5 million figure was actually received by
16 CPV.

17 THE COURT: Yes. So, Howe should be CPV.

18 MS. STEVENSON: Yes. Thank you, your Honor.

19 THE COURT: Any objections?

20 MS. ECHENBERG: Your Honor, I believe we've discussed
21 most of these originally.

22 THE COURT: Okay.

23 MS. STEVENSON: At paragraph 49 on page 14.

24 THE COURT: Yes.

25 MS. STEVENSON: I understand in prior sentencings in

1 this matter, your Honor has made a finding that the loss in the
2 Buffalo Billion scheme is actually zero.

3 THE COURT: Correct.

4 MS. STEVENSON:

5 THE COURT: So, what should that number be? So, it's
6 the total of the -- I don't know what section of the PSR.

7 Is this discussing just the Buffalo Billion at this
8 point?

9 MS. STEVENSON: No, your Honor.

10 MS. ECHENBERG: So, if I could just -- I think
11 perhaps, your Honor, the addition might be to note, just in
12 addition to what's already here, that the Court made a finding
13 that there was no loss in the Buffalo Billions scheme, because
14 we still stand by our argument of the \$36 million number, plus
15 the 1.5 from the Percoco scheme which I believe is what is
16 reflected in that 38 million here.

17 THE COURT: Okay.

18 MS. ECHENBERG: So, it's accurate as stated, but it
19 should be amplified by your finding.

20 THE COURT: Okay. I'll add a sentence that makes it
21 clear that I found that there was -- not that there's no loss,
22 but that it's not reasonably calculable.

23 MS. STEVENSON: Right. Thank you, your Honor.

24 THE COURT: Okay.

25 MS. STEVENSON: Skipping forward to paragraph 58 on

1 page 16.

2 THE COURT: Yes.

3 MS. STEVENSON: In light of your Honor's finding --

4 THE COURT: I'll take that -- when I go through the
5 calculation, I'll take the 22 down to zero.

6 MS. STEVENSON: Okay. Okay.

7 THE COURT: It's a plus 22, right?

8 MS. STEVENSON: Yes.

9 THE COURT: It may not be zero --

10 MS. ECHENBERG: I believe it takes it to the 1.5
11 million or the Percoco scheme.

12 THE COURT: Let me look.

13 Actually, I show it as plus 18. The loss table goes
14 -- it brings the loss table down to 3.5 to 9.5. Because he's
15 got a million dollars in embezzlement plus the --

16 MS. ECHENBERG: Right. That's right.

17 THE COURT: Is that right? I mean, with cooperators I
18 do a sort of short form guidelines calculation. And I think
19 what happened was I subtracted. I come up with 4.2 million
20 between the embezzlement --

21 MS. ECHENBERG: So, you're adding the 1.5 to the 1.7?

22 THE COURT: Yes.

23 MS. ECHENBERG: It's to benefit the CPV.

24 THE COURT: Right.

25 MS. ECHENBERG: That makes sense. That makes sense.

1 MS. STEVENSON: Yes. We agree, your Honor.

2 THE COURT: Okay. So, that takes us to a plus 18.

3 MS. STEVENSON: Correct.

4 On the following page, your Honor, paragraph 69 --

5 THE COURT: Hang on just a second. Let's go back to
6 58, because when I go through this, it's going to be very short
7 form.

8 Here's my calculation: It's 1.7 embezzled from
9 Whiteman Osterman. It's .7 in tax evasion. These are
10 millions. The COR bribery scheme is .03, and the Percoco
11 bribes are .3. So that adds to 3 -- or 2? My addition is off.
12 I have a decimal in the wrong place. Let me see if that makes
13 a difference.

14 MS. ECHENBERG: Your Honor, I just want to make sure I
15 understand the last two numbers.

16 THE COURT: So, the benefit to the COR bribery scheme
17 was 30,000?

18 MS. ECHENBERG: The benefit to --

19 THE COURT: To the conspirators, to the scheme.

20 MS. ECHENBERG: The benefit to Percoco was 35,000.

21 THE COURT: Percoco was like 300,000.

22 MS. ECHENBERG: Well, just with respect to COR.

23 THE COURT: For COR was 30,000?

24 MS. ECHENBERG: 35,000, right.

25 THE COURT: Okay.

1 MS. ECHENBERG: And then 287,000 was the benefit to --

2 THE COURT: Yeah. I rounded it up to three. It
3 doesn't really matter. That's not going to matter for this
4 purpose. But I still think I did the addition wrong. I think
5 it was whatever I said, one less than that.

6 Yes. It should be plus 16, which is what you said,
7 right?

8 MS. STEVENSON: Yes, your Honor.

9 THE COURT: Should be plus 16.

10 MS. STEVENSON: Thank you, your Honor.

11 THE COURT: None of this is going to have any effect
12 whatsoever.

13 MS. ECHENBERG: So, your Honor, I don't want to
14 overcomplicate this. But in the prior sentencings, or at least
15 in the Percoco sentencing --

16 THE COURT: Can you hold on just a second. Let me
17 just complete. Yes. Go ahead.

18 MS. ECHENBERG: So, in the Percoco sentencing, the
19 number -- the operable number, the number we relied on, was the
20 1.5-plus-million-dollar benefit to CPV.

21 THE COURT: Right. That's right.

22 For the CPV scheme; right?

23 MS. ECHENBERG: Right.

24 THE COURT: Okay.

25 MS. ECHENBERG: And so, what I thought you were saying

1 when you calculated 18 was the 1.7 million embezzlement benefit
2 to Todd Howe. And then you would add the 700,000 plus --

3 THE COURT: Tax evasion.

4 MS. ECHENBERG: -- tax evasion benefit and then add to
5 that the 1.5 plus.

6 THE COURT: Right. That is exactly what I did.

7 MS. ECHENBERG: Okay. And that --

8 THE COURT: Is 18.

9 MS. ECHENBERG: And that is 18. And I agree with
10 that. In our calculation, we had not included the embezzlement
11 tax, but we should.

12 THE COURT: That was exactly what happened.

13 Okay. So, we're back to where we were. So it's plus
14 18.

15 MS. ECHENBERG: Okay.

16 THE COURT: Okay. Next.

17 MS. STEVENSON: The next page, your Honor, paragraph
18 69 on page 17.

19 THE COURT: Yes.

20 MS. STEVENSON: Under date sentence imposed, this
21 indicates that Mr. Howe was sentenced to six months'
22 imprisonment, but that's actually not correct.

23 THE COURT: That's wrong.

24 MS. STEVENSON: Which would mean there's only one
25 applicable point here instead of two, I believe.

1 THE COURT: Is that right?

2 MS. ECHENBERG: Yeah. And just to clarify, the
3 criminal history computation is a little bit confusing because
4 they actually seem to apply four points, but then say the total
5 is two. And, in fact, in our view, there should be a single
6 point for a prior sentence that did not result in
7 incarceration.

8 THE COURT: Correct.

9 MS. ECHENBERG: And no additional points for an
10 instant offense while on probation.

11 I think the confusion is that the indictment date was
12 2010 but, in fact, the conduct began in 2012, when he was no
13 longer on probation from the original offense.

14 THE COURT: Okay. So, he's in criminal history
15 category one?

16 MS. ECHENBERG: Correct.

17 MS. STEVENSON: Yes, your Honor.

18 THE COURT: Okay.

19 MS. STEVENSON: We are almost there.

20 THE COURT: No, no, no though. Give me a minute.

21 MS. STEVENSON: Okay.

22 THE COURT: Okay.

23 MS. STEVENSON: Paragraph 109 on page 26.

24 THE COURT: 109?

25 MS. STEVENSON: Yes, your Honor.

1 THE COURT: Yep.

2 MS. STEVENSON: We would suggest simply adding a
3 sentence noting that Mr. Howe has, in fact, filed those 2017
4 taxes.

5 THE COURT: Which returns have been filed?

6 MS. STEVENSON: 2017, your Honor.

7 MS. ECHENBERG: And we noted that in our submission as
8 well.

9 THE COURT: Okay. We'll add that.

10 MS. STEVENSON: And then finally, your Honor, on page
11 27, at paragraph 115, you might be getting there anyway in your
12 calculation, but the guidelines need to be adjusted.

13 THE COURT: Correct.

14 MS. STEVENSON: And that is all that we have on the
15 presentence investigation report.

16 We would make one note about our sentencing
17 submission. In the final page, on 38, we stated the agreed
18 forfeiture calculation around 2.8 million.

19 THE COURT: Okay.

20 MS. STEVENSON: But I failed to include all the
21 components of that. It may not make a difference at this
22 point. My explanation is that doesn't affect the fact that we
23 agreed to the \$2.8 million.

24 THE COURT: I think I got an agreed upon forfeiture
25 order, right?

1 MS. STEVENSON: Yes, your Honor.

2 THE COURT: That was signed by everybody.

3 Okay. The presentence report, as corrected, will be
4 made part of the record in this matter and placed under seal.
5 If an appeal is taken, counsel on appeal may have access to the
6 sealed report without further application to this Court.

7 I received a sentencing submission from the defense,
8 dated March 22, 2019, that included letters from family and
9 friends of the defendant.

10 I received another letter dated April 4, 2019 that
11 included letters from Mr. Howe's friends at MCC. And I
12 received an updated credit report, as ordered when he was
13 released on bail, dated April 3rd, which reflected compliance
14 with the terms of the pretrial release, at least as it affected
15 his getting credit. And I received a 5K letter from the
16 government, dated March 22, 2019.

17 So the next step is the guidelines calculation. Just
18 so we're all on the same page, the defendant pled guilty to
19 eight felonies ranging from tax evasion to wire fraud, to
20 extortion to various conspiracies. The presentence report
21 reflects the guidelines level of 37, criminal history category
22 three, which yields a guideline range of 262 to 327 months.

23 For the reasons discussed during the sentencing of
24 Mr. Ciminelli, Mr. Gerardi and Mr. Aiello, I disagree with the
25 loss calculation.

1 The cumulative loss plus the benefit to Howe that is
2 reasonably estimable at 4.2 million. That takes out the
3 construction fees for the Buffalo Billions projects and it
4 takes out fees that were paid to Whiteman Osterman & Hanna and
5 Potomac Strategies by COR, CPV and Ciminelli on the theory that
6 Howe was actually doing some legitimate government affairs work
7 for those clients. Even assuming that some of those amounts
8 were ill-gotten gains, the loss table goes from 3.5 million to
9 9.5 million. So regardless, the correct enhancement is plus
10 18.

11 In other respects, the presentence report correctly
12 calculates the guidelines other than his criminal history,
13 which we've already discussed. So the total adjusted offense
14 level should be 33; criminal history category one, which yields
15 a guideline range of 135 to 168 months.

16 Two grounds -- actually I see one ground for departure
17 under the guidelines. The government made a 5K motion, which
18 allows me to depart downwardly.

19 Are there any factual issues in dispute?

20 MS. ECHENBERG: No, your Honor.

21 MS. STEVENSON: No, your Honor.

22 THE COURT: I'm going to ask the government if they
23 would like to be heard. Let me just tell you a couple of
24 things that I would like you to address, if you're not already
25 addressing them. You indicated in the 5K letter that Mr. Howe

1 came in to cooperate while the investigation was under way but
2 not complete. So, my question generally is:

3 Was the government aware of all three schemes, that
4 is, the Buffalo Billions Scheme, CPV and COR, as it affected
5 Percoco before Mr. Howe began cooperating?

6 And second, Mr. Howe has been involved in government
7 affairs for a very long time. Does the government have any
8 indication that he was involved in corrupt schemes prior to the
9 earlier scheme in this case, which would have begun when he
10 started embezzling from Whiteman Osterman?

11 MS. ECHENBERG: Thank you, your Honor.

12 I'm going to go to the podium, if that's okay.

13 THE COURT: That's fine.

14 MS. ECHENBERG: As your Honor knows, for years, Todd
15 Howe was the center of two sophisticated corruption schemes.
16 Why was he at the center of those schemes? Because he was
17 precisely the type of corrupt and compromised individual who
18 could be a partner in crime to Joe Percoco, Alain Kaloyeros and
19 the other businessmen defendants in this case. He was the type
20 of person they needed and they wanted to execute their bribery
21 and their fraud schemes. And Todd Howe came through for his
22 coconspirators.

23 The schemes in this case resulted in hundreds of
24 thousands of dollars for Percoco, millions for CPV, COR and
25 Ciminelli an increased power and job security for Kaloyeros.

1 And Todd Howe enriched himself, too, to the tune of millions of
2 dollars through consultancy fees and his own embezzlement and
3 tax evasion.

4 And to your Honor's question, no, we were not aware of
5 other schemes prior to what he pled guilty to. And I think, as
6 your Honor knows, as part of his cooperation to the extent that
7 there were approvable other crimes such as these, we would have
8 required that he plead guilty to those crimes.

9 In June 2016, Todd Howe made a life-altering decision.
10 A few months earlier in April, the government had executed a
11 number of search warrants. We searched Joe Percoco's home. We
12 searched Todd Howe's home in his Washington, D.C. office. And
13 we searched the home of Chris Pitts. And I'm sure you remember
14 the friend of Braith Kelly's through who the bribes associated
15 with CPV were paid.

16 At that point, when it had been an almost yearlong
17 covert investigation by the government, became an overt
18 investigation. And after all the people that were implicated
19 in that investigation, Todd Howe is the only person who came
20 forward to cooperate. Only Todd Howe began to proffer with the
21 government. Only Todd Howe pled guilty before he was formally
22 charged, and only Todd Howe cooperated before anyone else was
23 convicted.

24 And I'll address your Honor's second question, which
25 was: Basically where were we at that point when he came

forward?

So, yes, we knew about all three schemes. I think I can fairly say that we were further along with some but not others, but we were on our way and expected to charge all of the schemes. But as we set forth in our 5K letter, having a person who could help us take what was an indescribable number of documents that we had collected over that investigation and help us narrow down particular timeframes, particular communications or send us looking for specific things that he recalled, was immensely helpful in those final months before we charged the entire case.

So, in the summer months of 2016, and again in the winter months of 2017 and early 2018, Todd Howe spent a lot of time with the government. We went through binders and binders of documents. We went over timelines of the relevant events. And we talked a lot about his extensive history of fraud. And when Todd Howe testified at trial, his recollection of conversations for which he was the only testifying witness, significantly bolstered the government's case, and he brought to life what was essentially a document case, without his testimony.

So, if we could leave it at that, this would be a relatively easy sentencing. But, as you well know, that's not this sentencing. This sentencing is candidly one of the most difficult that I have encountered. Howe's behavior with regard

1 to money continued to be reckless, even after he cooperated,
2 even after he signed his cooperation agreement. And because of
3 that, his testimony took that dramatic turn on the second day
4 of his cross-examination, and that resulted in his remand. In
5 what I believe is an unprecedented move, we put our own
6 cooperator in jail in the middle of his testimony because there
7 was probable cause to believe he had engaged in a fraud that we
8 did not know about. And that obviously had significant impacts
9 to that trial and to the trial that followed.

10 But with the benefit of time and with further
11 analysis, we've learned that he did not consummate that fraud.
12 And we've ultimately determined that, while he acted
13 thoughtlessly and recklessly just a month after signing his
14 cooperation agreement, he did not commit another crime that
15 would require us to void that agreement.

16 So, I think the question for the Court today is how
17 much this incident, which we have also discussed extensively in
18 our briefing, should offset Todd Howe's significant and
19 extensive cooperation that contributed to the conviction of
20 seven other individuals. There's no doubt that his sentence
21 should reflect these post-cooperation transgressions. And
22 whatever sentence your Honor gives will, of course, include the
23 six months that he's already spent in federal custody.

24 But it's the government's view that taking everything
25 into account, Todd Howe's cooperation meets or exceeds all of

1 the factors that are set forth as reasons to depart under a
2 5k1.1. His cooperation, which was several months before anyone
3 else was charged, was obviously timely. His 20 months of work
4 with the government was, without question, extensive,
5 significant and useful to the government. And his testimony
6 about the relevant facts at trial was truthful and complete and
7 reliable, and as we all saw in court, was extensively
8 corroborated by the documented evidence.

9 And finally, his assistance brought tremendous and at
10 times damaging spotlight on had him and his family. He was, by
11 any measure, a very productive cooperator, who played a
12 critical role in a high-profile case that had a significant
13 impact, both in the number of people convicted, and in the
14 ongoing discourse about corruption in government. And since
15 pleading guilty, he has made positive strides. He's
16 significantly reduced his debt, including to the IRS and he's
17 been a productive member of his new community in Idaho. And
18 his letters of support also evidence a man who, despite his
19 many faults, has been and continues to be generous and caring
20 to his friends and family.

21 So, for all of those reasons, and for all of the
22 reasons in our submission, we move under 5k1.1 that he be
23 sentenced under the factors of that section, in recognition of
24 his unique and substantial cooperation in an important
25 corruption case. Thank you.

1 THE COURT: Thank you, Ms. Echenberg.

2 Ms. Stevenson?

3 MS. STEVENSON: Yes, your Honor.

4 The government has summed up Mr. Howe's cooperation
5 certainly better than I ever could. And your Honor, has read
6 our submission.

7 With respect to the question that the government
8 raises about how much Mr. Howe's remand should impact what
9 happens here today, I think it's our position that the time
10 that Mr. Howe has had post-MCC suggests that his remand -- the
11 incident that led to his remand should not impact his sentence
12 at all.

13 When your Honor first raised the notice of a bail
14 application and ultimately released Mr. Howe last August,
15 your Honor said to Mr. Howe, This is your last chance. Don't
16 mess it up. And I would submit to your Honor that not only has
17 Mr. Howe not messed it up, but he's given the Court every
18 indication that he was, in fact, worth that chance and that he
19 is ready and able to move his life forward in a law-abiding and
20 productive manner.

21 Since being released from the MCC, Mr. Howe has met
22 all of his conditions of release, and I think he's, in fact,
23 exceeded the expectations. Mr. Howe is thriving in his job.
24 As the letter from his supervisor indicated, he's excelling
25 both in terms of his work and in terms of making a difference

1 in the lives of other employees. And even just in the past two
2 weeks, your Honor, Mr. Howe has, of his own accord, taken
3 advantage of the changing seasons. He has chosen to go to work
4 at the Ski Hill from about 4:00 p.m. until about 1:00 a.m. and
5 then come home and turn it around and go to the golf facility
6 at about 7:00 a.m. to prepare for the summer. So, he's working
7 from about 7:00 a.m. till 1:00 p.m. And I think that Mr. Howe
8 is putting in these 18-hour days for several reasons that give
9 the Court a clear picture of his focus and determination.

10 First, as Mr. Howe noted in his own letter, the
11 physical work is extremely therapeutic for him. The physical
12 labor is a daily reminder that an honest paycheck comes from
13 honest work. And I think secondly, your Honor, and most
14 important to Mr. Howe, he is laser-focused on contributing to
15 his family again and to showing them that a rebirth is
16 possible.

17 And finally, your Honor, Mr. Howe is determined to pay
18 off those debts. Since his release from the MCC, Mr. Howe has
19 timely made all his IRS payments and made steady progress on
20 his other debts, as you've seen in the credit reports that we
21 submitted this week.

22 And even aside from his work, your Honor, Mr. Howe is
23 finding opportunities in his Idaho community to help others. I
24 think most significantly, Mr. Howe has connected with a number
25 of, what I think can be described as young, transient folks who

1 come to the mountain for seasonal work but don't otherwise
2 necessarily have any direction in life. And he has used his
3 own personal story, including his period of incarceration, to
4 help them envision a future for themselves and take steps
5 toward achieving that, even in ways as seemingly simple as
6 getting up early and calling someone to wake up and make sure
7 they show up for work. But that is meaningful to these folks.

8 So, your Honor, Mr. Howe is working hard. He's
9 contributing to his family and he's finding small ways to be
10 helpful to his community. And I would submit to your Honor
11 that if the time since his release from the MCC could be
12 considered a test, that Mr. Howe has undoubtedly passed that
13 test.

14 In closing, I'd like to make one personal observation,
15 your Honor. I am here with Mr. Howe for what is likely my last
16 federal sentencing because I am moving on from law firm life
17 after today. And in reflecting on that as it relates to
18 Mr. Howe, I am really struck by certain commonalities that he
19 shares with my very first federal sentencing years ago. And
20 these commonalities really provide me bookends to my experience
21 that caused me and caused Mr. Howe to be very hopeful about our
22 criminal justice system and about Mr. Howe personally.

23 In that earlier CJA case I represented a narcotics
24 trafficker who was also a drug addict himself. And because of
25 his arrest, he got the rehab he needed, he got clean, and he

1 got back to work. And when he was sentenced, the Court looked
2 at that progress he had made and sentenced him to time served.

3 Now, I am still friends with that gentleman today.
4 And over time, he has been able to work up to becoming a deacon
5 with a small congregation at a church. And this is a success
6 story, your Honor, and a success story that only happened
7 because the justice system intervened. And I submit that the
8 same can be true here with Mr. Howe. Because of this case,
9 because of his incarceration, Mr. Howe has, in his own way,
10 gotten clean. He has unburdened himself from the shame and the
11 secrets and the lifestyle and the influences that caused him to
12 commit serious crimes.

13 And Mr. Howe has gotten back to work. He's feeling
14 that satisfaction and that freedom with knowing that what you
15 get is what you earn. And like my old client and friend,
16 your Honor, Mr. Howe has given me every indication and every
17 hope that once he firmly regains his footing, he will
18 contribute to his community in even more significant ways.
19 But, of course, I know that, like my old client and friend,
20 Mr. Howe's continued progress and continued ability to make
21 amends depends in part on the Court's decision today.

22 And so, for all of the reasons that we cite in our
23 sentencing memorandum, and for the reason of -- for the fact of
24 Mr. Howe's demonstrated progress and ability to move forward,
25 we'd respectfully request a sentence of time served and believe

that that's warranted and appropriate in this case. Thank you.

THE COURT: Thank you, Ms. Stevenson.

Mr. Howe, would you like to be heard?

THE DEFENDANT: I would, your Honor.

THE COURT: Okay. You have the floor. Just make sure you have a microphone that's somewhere close to you and speak up nice and loud.

THE DEFENDANT: Sure. Your Honor, thanks for the opportunity to address the Court. I appreciate that.

First and foremost, I want to say I broke the law, broke many laws. I'm responsible for my actions and my behavior. And those actions have brought me here, and my behavior and breaking the law has brought me here today in front of you. I feel compelled and driven by my heart to say I apologize to my wife of some 35 years, my two children, who I love and adore. My former employee or former business associates, my employer, I apologize to. Also, having been in public service, I certainly want to apologize to the public servants in New York State that in some way may have been touched by this scandal; it has, no doubt, probably affected some of them, because they do great work and are really in it for being a public servant. So, I apologize to them as well.

Your Honor, when I went to MCC, obviously it was a horrible situation for me. But it was a learning experience. I got up every day, looked in the mirror. It's not even a

1 mirror. It's a polished piece of stainless steel, I guess, or
2 whatever it was. But I would look every day, and I'd ask
3 myself: Why did I do what I did? Why did I throw everything
4 away? Why did I embarrass my family and my colleagues, my
5 employer? Why did I do all of those things that I pled guilty
6 to? And I take full responsibility for every one of them.

7 And so, I spent several months, as you know, there.
8 And I looked deep down inside and I did a lot of sort of
9 self-exploratory and sort of digging to find out why I did the
10 things I did. And I slowly but surely came up with -- there
11 were many obviously. But I sort of zeroed in on three that I
12 think were instrumental in my demise and that I'm extremely
13 sorry for.

14 First was my inability to say no. I always said yes.
15 And in this case, I said yes to the wrong people, and I should
16 have said no to those people. And I'm not saying it was their
17 fault. I'm saying it was something that I have been always, a
18 guy that always said yes to everything because I didn't want to
19 disappoint everyone. And so, that is a factor that I thought
20 about long and hard and realized I should -- I needed to be
21 able to say no, but to say yes to the people that really
22 deserved to be said yes to.

23 The second factor that I identified -- and it took a
24 while until I thought this one through -- was, as I indicated
25 during the trial, I lived a lifestyle that was beyond my means

1 for many years. And I think my wife referenced -- because I
2 talked to her about this. My wife referenced in her letter to
3 you, your Honor, that it was almost like a duck across a pond.
4 I mean, it was a fluid, flowing duck across the pond. No one
5 sees any ripples, but underneath there is this ruckus and chaos
6 and churning all sorts of things up from the bottom that nobody
7 sees. And that was very much like me in the sense that I tried
8 to keep this image of sort of no ripples on the top, but
9 underneath I was scavenging and digging and, you know, kicking
10 my feet day after day in order to stay above water. So, that
11 was one of the factors.

12 The third factor was -- and, again, I'm not blaming
13 this on anybody else, it was my responsibility. The third
14 factor was that I had -- I was in Washington, D.C. And I was
15 in Albany and York, and I was in government affairs and
16 politics. And to be relevant in those worlds, unfortunately --
17 and it certainly was not what our forefathers ever envisioned
18 when they thought of lobbying or government affairs -- was I
19 had to stay relevant and I had to stay successful. In order to
20 stay successful, I broke laws to be successful. And that was
21 unacceptable obviously.

22 So, there was that environment that I was in that I
23 constantly, in order to be viewed as successful in the lobbying
24 business, I did things that I shouldn't have done. And it was
25 it is in that environment that I feel it was a tough

1 environment to be in, but I did the things I needed to do to be
2 relevant, unfortunately.

3 All those factors, those three factors -- and
4 obviously more that I'm going to think about over time that I
5 know will probably surface -- brought me to think when I was at
6 MCC that I thought, the day, if and when I ever get out of MCC
7 -- it's almost like an individual who's had a near-death
8 experience, they always come out and say they have a new lease
9 on life. And I thought to myself, you know, I'm going to live
10 every day to the fullest and work my tail off. I'm going to be
11 in a pretty isolated little town doing physical labor, but I'm
12 going to be honest and I'm going to walk a line of honesty and
13 truthfulness. I'm going to fulfill my financial obligations.
14 I've been paying, as counsel said, my IRS bills every month.
15 Living a very modest lifestyle with my wife, who I love very
16 much. And I'm going to work to regain my trust amongst my
17 family first, and I'm going to try to contribute to my
18 community as much as I can and be helpful to folks in my
19 community.

20 In some ways, your Honor -- and this might sound
21 ironic -- I think going to MCC, although it was a horrible
22 experience was probably the best experience for me because it
23 made me realize all the things I had lost and it also made me
24 realize the things I needed to change.

25 And I hope that what you've seen in the last several

1 months by my actions have demonstrated more than words that I'm
2 doing what I should be doing and I'm living, in my mind, a
3 simple life, which I enjoy.

4 And I would ask that you continue to let me make
5 progress in that direction and let me stay there and continue
6 to work hard and do all the things I'm doing for my family. I
7 believe I'm working and doing as much as I can, and to fulfill
8 that path, I need to be an honest citizen and contribute to my
9 community.

10 Thank you, your Honor.

11 THE COURT: Thank you, Mr. Howe.

12 Mr. Howe, federal law requires me to consider the
13 nature and circumstances of the offense and the history and
14 characteristics of the defendant.

15 Mr. Howe is a 58-year-old college graduate. He
16 started his career working for the government, but for about
17 the last fifteen years of his professional life, worked as a
18 lobbyist. By all accounts, Mr. Howe was a successful lobbyist.
19 It is fair to say that Mr. Howe knew most of the politicians in
20 Albany and knew how to get things done in state government.
21 People would take his calls. And critically, for people like
22 Alain Kaloyeros, Howe knew how to get someone within the good
23 graces of Andrew Cuomo.

24 While the defendants in this case all profess to be
25 shocked by the Todd Howe that was revealed during this trial,

1 it is safe to say that their companies hired Todd Howe because
2 Todd Howe was good at what he did. And while the defendants
3 cooperated against may have been unaware of the train wreck
4 that Mr. Howe's personal, financial life had become, they were
5 well aware of the ways in which he had obliterated the line
6 between legitimate lobbying and legitimate government affairs
7 activities, and illegal bribery and extortion.

8 Mr. Howe has two grown children and he has been
9 married to the same woman for over 30 years. As a result of
10 this case, he and his wife have moved to Idaho where he's
11 working in a resort town in Ketchum, Idaho, which is a
12 beautiful place.

13 Howe's last ten years, starting around 2009 or 2010
14 were a downward spiral. Although he was making a very sizable
15 salary, it put him in the top five percent of owners
16 nationwide. Howe was spending way more money than he was
17 making. That included putting his children into expensive
18 boarding school, owning very nice houses in a ritzy area,
19 driving very expensive cars, and apparently doing all kinds of
20 other stuff to flitter away huge sums of money.

21 He supported his overindulgent lifestyle by stealing
22 from his employer, defrauding merchants and tradesman and
23 borrowing money from a wide variety of friends who frequently
24 had to sue Mr. Howe in order to be repaid. That said, those
25 friends were continuing to stand by him, and his family

described him as the salt of the earth, someone always there for his family and quick to help his friends.

Finally, if not like many cooperating witnesses in white-collar cases, Todd Howe has had a taste of jail. The government revoked his bail during the Percoco trial based on probable cause that he actually attempted credit card fraud after signing his cooperation agreement. He remained in jail at the MCC for approximately six months. I've reviewed carefully the transcript of calls with Capital One and the dispute file.

Howe said during his cross that he believed when he called that he had not stayed at the hotel that night, but that there had been a lot of travel to New York. The credit card company told him that if the merchant, Walberg and Amtrak, said the charges were legitimate, he would have to sign an affidavit contesting them. That never happened. Howe did not return the dispute affidavit for any of the disputed charges.

I fully understand the government's decision not to call Mr. Howe during the Buffalo Billions case, which definitely made that a harder case to prove. And I understand their view that the call to Capital One, when he was not one hundred-percent sure that the charges were bad charges, were reckless.

All of that said, while it is possible that Howe was trying to scam his credit card company, his explanation of what

1 happened is not entirely unpalusible. In fact, but for Howe's
2 history of lying to merchants to postpone paying Peter so he
3 could pay Paul, I would say there is explanation for what
4 happened is plausible. The problem is that he has a bad track
5 record, a track record relative to this sort of conduct.

6 In any event, based on the record that I have in front
7 of me, I cannot conclude that he actually violated the
8 cooperation agreement. If I had reached that conclusion, the
9 sentence I intend to impose would be very different. Taking
10 into account that assessment of the defendant, federal law
11 requires me to impose a sentence that is reasonable and no
12 greater than necessary to accomplish the goals of sentencing.
13 I've considered all of the sentencing factors as well as the
14 relevant 5K factors. In terms of what's most important, we
15 start with the seriousness of the offense.

16 Public corruption is one of the most serious of
17 federal crimes. The sort of corruption Howe was involved in
18 opposed citizen's faith in government. It tells everyone that
19 the government's decisions are not made on the merits. It's
20 all about who knows who and who's greasing whose palms. That's
21 deeply troubling and feeds on itself. The more the citizens of
22 this state believe that the government is corrupt, the easier
23 it is for public officials to justify to themselves being
24 corrupt. So, if everyone does it in theory, that minimizes in
25 their own mind their culpability. And the more people believe

1 that everyone is corrupt, the more likely it is that the public
2 will offer bribes or agree to pay bribes because they really
3 believe that that's the only way to get things done and that's
4 what everyone does. In short, the public corruption schemes of
5 which Howe was a critical player were very serious crimes. And
6 I say that not minimizing the theft from Whiteman Osterman &
7 Hanna or the tax evasion. Those were all serious crimes,
8 though not as serious as corruption.

9 I've considered the need to provide just punishment
10 for Mr. Howe's crime while avoiding unwarranted disparities.
11 The sentences of the other defendants who were involved in the
12 Buffalo Billions, COR and Percoco cases range from time served
13 for Mr. Schuler, who also cooperated to six years. And some
14 defendants with were ordered to pay very substantial fines.
15 Except for Schuler, those defendants are not similarly
16 situated, because only Kelly accepted responsibility for his
17 actions and he did so only after a full-blown trial, and none
18 of those defendants cooperated.

19 The most similarly situated defendant is Schuler.
20 Schuler is, however, far less culpable than Howe. He was
21 involved only in the Buffalo Billions case. He did not
22 personally profit, except as to whatever value he recognized by
23 virtue of the fact that Ciminelli got the contract for the COR
24 project in Buffalo. And he did not live a life of one fraud
25 after another in the years leading up to the case.

1 On the other hand, Howe's cooperation was more
2 valuable to the government, largely because his criminality was
3 more extensive. Howe was, as I have said numerous times, a
4 credible witness. I found his testimony in the Percoco trial
5 to be credible and that he either embellished the defendant's
6 conduct or minimized his own. I accept the government's 5K
7 letter that he spent hours upon hours of days working with them
8 so that they understood what happened and was able to cogently
9 present what was a complicated case to a jury.

10 I've considered the need to deter criminal conduct.

11 Mr. Howe, there are two aspects of deterrence that we
12 think about when passing sentence, specific deterrence and
13 general deterrence. Specific deterrence is how do we deter
14 you. General deterrence is how do we deter people generally.
15 In terms of specific deterrence, specific deterrence is of
16 concern here.

17 While Mr. Howe had some therapy to come to terms with
18 how things could go so wrong, to the extent that he has an
19 element of compulsive spending, I'm not entirely sure that six
20 months of therapy is adequate. His ability to abide by the
21 terms of pretrial release give me some hope that Mr. Howe will
22 be able to stay on the straight and narrow. Time spent at the
23 MCC in that regard helps.

24 Mr. Howe, you now know what prison is like. Hopefully
25 that will be a lasting reminder of what can happen if you again

1 cross the line of illegality.

2 In terms of general deterrence, it's incredibly
3 important in corruption cases to make sure that everyone
4 understands that this sort of crime will be dealt with harshly.
5 It's also important for people to understand that cooperation,
6 which is critical to the government's ability to prosecute
7 cases like this, is rewarded.

8 Lastly, I've considered the need to provide the
9 defendant with needed educational or vocational training,
10 medical care or other correctional treatment. As to Mr. Howe,
11 this factor comes into play because I believe he needs
12 continued help to make modest living within a middle-class
13 income enough of a habit so that he will not again start
14 chasing fancy living that is beyond his means.

15 Based on all my considerations of the sentencing
16 factors and taking into account his substantial assistance to
17 the government, I find that the guidelines sentence is
18 substantially longer than necessary to achieve the goals of
19 sentencing.

20 Probation recommends time served plus three years of
21 supervised release. I'm not convinced that three years of
22 supervised release is sufficient time to ensure that the habits
23 that Mr. Howe is building are entirely internalized.
24 Accordingly, I'm going to suspend the submission of sentence
25 and place the defendant on five years of probation.

1 Other than the longer time period, Mr. Howe, the
2 difference between supervised release and probation is the
3 penalty if probation is revoked. With supervised release, I
4 can only sentence you to the period of supervised release.
5 With probation, I haven't sentenced you yet. So, all the time
6 that you're facing now, you will be facing if you violate
7 probation.

8 If you've really turned a corner that's all irrelevant
9 because I'll never see you again, and it won't be an issue. If
10 you haven't, you'll be back in front of me.

11 In addition to the mandatory conditions of probation,
12 I'm imposing the following special conditions -- strike that.

13 These are the mandatory conditions of probation: The
14 defendant must not commit another crime. The defendant cannot
15 illegally possess a controlled substance. The defendant cannot
16 possess a firearm or other destructive device. I'm waiving
17 mandatory drug testing because the risk of drug abuse is low.
18 The defendant must cooperate in the collection of DNA.

19 In addition to the standard conditions of probation,
20 I'm imposing the following special condition.

21 First, the does the government want the condition that
22 the defendant must continue to cooperate and comply in
23 prosecution of others?

24 MS. ECHENBERG: We're complete but we'll take that
25 condition.

1 THE COURT: All right. I'm going to impose that as a
2 condition.

3 It's highly unlikely that they're going to be calling
4 you for now, but if something comes up, you must continue to
5 cooperate with the government.

6 The defendant must provide 150 hours of community
7 service for every year of probation. The defendant must
8 continue to pay the IRS a thousand dollars a month against your
9 outstanding tax liability. The defendant must participate in
10 outpatient mental health treatment, as directed by the
11 probation office. The defendant must contribute to the cost of
12 services based on your ability to pay or the availability of
13 third-party payments. I'm authorizing the release of available
14 psychological and psychiatric evaluations, including the
15 presentence report, to the mental health provider.

16 The defendant must not incur credit charges or open
17 new lines of credit without the permission of the probation
18 officer. The defendant must not make any purchase exceeding a
19 thousand dollars, except for rent and emergency expenditures,
20 without the permission of your probation officer.

21 A pretrial condition is that the defendant's attorney
22 must hold all the defendant's credit cards, except for one.
23 Counsel may now return the credit cards to Mr. Howe, but
24 Mr. Howe must disclose to his probation officer all his credit
25 cards and must provide his probation officer on a request of

1 his monthly credit card bills. The defendant must provide the
2 probation officer with access to any requested financial
3 information. He must report to the nearest probation office
4 within 72 hours of today, and will be supervised by the
5 district of residence.

6 I'm not imposing a fine because I find there is no
7 ability to pay a fine. To the extent Mr. Howe has available
8 resources, they are better used to pay his back taxes or to pay
9 restitution.

10 There's an agreed-upon order of forfeiture, so
11 Mr. Howe is ordered to forfeit \$2,835,000. The restitution
12 amount to Whiteman Osterman & Hanna is \$1,706,542.

13 Correct?

14 MS. ECHENBERG: Yes, your Honor.

15 And you should have a restitution order as well, or I
16 can pass one up.

17 THE COURT: I do.

18 Okay. Ms. Stevenson, probation is recommending that
19 the defendant be required to pay 20 percent of his gross
20 monthly income and restitution. He is already paying a
21 thousand dollars to IRS.

22 Do you have a position on what percentage makes sense
23 here?

24 MS. STEVENSON: I think it may make sense to the
25 extent it's possible to think about a graduated payment

1 schedule. I don't think that his cash flow at the time for
2 this 20 percent. I think ten percent is probably more
3 reasonable at first, with perhaps the opportunity to increase
4 that over time.

5 THE COURT: Okay. What -- I think I know.

6 I think the real issue is whether it's going to be
7 net, or -- whether it's going to be net or the IRS payment,
8 because I'm not sure how much available resources he has beyond
9 the thousand dollars he's paying IRS, which he's not going to
10 live long enough to pay off.

11 MS. STEVENSON: The answer is not much, your Honor.

12 THE COURT: All right. I'm going to make it ten
13 percent net of the IRS payment. That will change, and the
14 order will provide that if your financial resources change,
15 that's going to change. And it will be adjusted accordingly.
16 But you've got to live. Even in Idaho, there's a limit. So,
17 it's ten percent net of the IRS payments. I must impose an
18 \$800 special assessment.

19 Are there any open counts or any underlyings in the
20 indictment?

21 MS. ECHENBERG: No, your Honor.

22 THE COURT: All right. Mr. Howe, to the extent you
23 have not given up your right to appeal your sentence to your
24 plea of guilty in the agreement you entered into with the
25 government, in connection with that plea, you have the right to

1 appeal. If you're unable to pay the cost of an appeal, you may
2 apply for leave to appeal *in forma pauperis*. The notice of
3 appeal must be filed within 14 days of the judgment.

4 Anything further from the government?

5 MS. ECHENBERG: Yes, your Honor.

6 I understand -- or am I correct in understanding that
7 the five years of probation is on each count concurrent?

8 THE COURT: Yes. Thank you. It's on each count
9 concurrent.

10 Ms. Stevenson, anything further?

11 MS. STEVENSON: No, your Honor. Thank you.

12 THE COURT: Thank you, all.

13 Mr. Howe, good luck.

14 (Adjourned)